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| 08/505621<br>APPLICATION NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO. |
|---------------------------------|-------------|-----------------------|---------------------|

08/505,621 07/21/95 KOTLIAR

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33M1/0919

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| ASHPP EXAMINER |
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| ART UNIT | PAPER NUMBER |
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3312  
DATE MAILED:

09/19/96

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

**OFFICE ACTION SUMMARY**

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

**Disposition of Claims**

- ☒ Claim(s) 1-22 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-22 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

**Application Papers**

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

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*The requirements for Information Disclosure Statements (IDS) require that the information be listed in a separate paper. Therefore, prior art mentioned in the specification which is not also listed in a separate paper does not comply with 37 CFR 1.98. Further guidance can be found in Section 609 of the MPEP under the heading "C. EXAMINER HANDLING OF INFORMATION DISCLOSURE STATEMENTS" on pages 600-93 through 600-95, Rev. 1, Sept. 1995.*

See prior <sup>art</sup> listed on pages 3, 6, 8, 9, 12, 13, 15, and 17. JA

*The Abstract of the Disclosure is objected to for the reasons set forth below. Correction is required. See M.P.E.P. § 608.01(b).*

The abstract must be in the form of a single paragraph.

*The drawings are objected to under 37 C.F.R. § 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter of the claims must be shown or the non-illustrated features cancelled from the claims. No new matter should be entered.*

*The following is a quotation of the first paragraph of 35 U.S.C. § 112:*

*The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.*

*The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate written description, and failing to adequately teach how to make and/or use the invention, i.e. failing to provide an enabling disclosure.*

Applicant says that the use of hypoxic air to treat/fight sleepiness and inattentiveness (page 18, the last paragraph). Yet the prior art, the textbook and Lane, teach that the

effects of hypoxic gas are sleepiness and fading mental capabilities. There is no<sup>LA</sup>  
evidence to support applicant's conclusion that hypoxic gas will do the opposite that  
the literature teaches. Is applicant making a distinction between delivery of hypoxic<sup>LA</sup>  
gas at atmospheric pressure vs. hypoxic gas at subatmospheric pressures? If so, why  
5 does applicant teach in this specification, that the hypoxic room may be pressurized at  
either hypobaric or hyperbaric pressure?

10 *Claims 1-22 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in  
the objection to the specification.*

15 *Claims 17-22 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for  
failing to particularly point out and distinctly claim the subject matter which applicant  
regards as the invention.*

Claim 17 is incomplete - it ends in a semi-colon and appears to be missing text.

Accordingly, the scope of the claim is unknown, and no attempt will be made to  
apply art to this claim or any claims dependent thereon.

20 *The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the  
basis for the rejections under this section made in this Office action:*

25 *(b) the invention was patented or described in a printed publication in this or a  
foreign country or in public use or on sale in this country, more than one year prior  
to the date of application for patent in the United States.*

30 *Claims 1, 2, 4-7, 10, 13, and 16 are rejected under 35 U.S.C. § 102(b) as being clearly  
anticipated by Lane.*

*The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:*

5       *A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

10       *Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.*

15       *Claims 12 and 14 are rejected under 35 U.S.C. § 103 as being unpatentable over Lane.*

Lane also provides a ventilation valve to allow for repressurization of his hypobaric chamber when testing/training is complete. The determination of an optimum valve size would have been obviously determined by one of ordinary skill in the art by upon routine experimentation based upon the size of the room and the various pressures used.

25       *Claims 3 and 11 are rejected under 35 U.S.C. § 103 as being unpatentable over Lane as applied to claims 1, 2, 4-7, 10, 13, and 16 above, and further in view of Batter or Lake.*

Both Batter and Lake teach a hypoxic therapy room where the air delivered for breathing is drawn from the outside, processed and pumped to the chamber. At the same time, the air within the room is pumped out at a faster rate to decrease the atmospheric pressure within the room to simulate various hypoxic, high altitudes.

*Claims 8, 9, and 15 are rejected under 35 U.S.C. § 103 as being unpatentable over Lane as applied to claims 1, 2, 4-7, 10, 13, and 16 above, and further in view of Fabregat and McCombs.*

5 Fabregat teach the functional equivalency of various types of bulk gas generators, including bottled, cryogenic, molecular sieve, or permeable membranes as taught by Lane. Given the teachings of Fabregat, it would have been obvious to one of ordinary skill in the art to have substituted one known gas generator for another. McCombs teaches a PSA unit which can be used to generate a variety of gases  
10 (column 1, paragraph 1). Again, in view of the teachings of Fabregat, it would have been obvious to one of ordinary skill in the art to have replaced the permeable membranes gas producer of Lane with a PSA type as taught by McCombs, as such would merely involve the substitution of one known functional equivalent for another.

15 Although an election of species was discussed with Mr. Kotliar on 9/6/1996, the Examiner decided to not make such a requirement at this time, after searching the case.

20 *The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.*

Note the hyperbaric exercise chambers of Todeschini et al, Gamow, and Whalen et al. Note the automatic atmospheric control means for enclosed atmospheres taught by  
25 Henson, Qian et al, and Zavod et al. Note the construction techniques taught by Bergdoll, Jr. in the Journal of the A.S.R.E. Note the therapeutic uses of hypoxotherapy taught by USSR patents and Shoemaker. Note the gas separating

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membranes taught by Tsuchida et al, Burgoyne, Jr. et al, Athayde et al, the EPA patent, the Japanese patents, and Tkatchouk et al. Note the PSA/molecular sieves of the Japanese patents. Note the compressed tank gas sources of the German patent. Note the hypobaric chambers of Gamow, LeGrand, Onge, Harris, Smith, Nixon, and Harper.

*Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Examiner K. L. Asher at telephone number (703) 308-0858.*


*Any inquiry of a general nature should be directed to the Group receptionist at (703) 308-0858.*

*Status inquiries are to be handled according to MPEP section 203, and directed to the Group receptionist, not the Examiner.*

*Inquiries as to Terminal Disclaimer and PCT requirements should be directed to the Group Paralegal, Mr. Andre Robinson, at (703) 308-2104.*

*The facsimile phone number for Art Unit 3312 is (703) 308 - 3139. **PLEASE CALL THE EXAMINER PRIOR TO SENDING ANY FAX.** This will ensure that the Examiner receives the fax promptly.*

*September 12, 1996*

  
KIMBERLY L. ASHER  
PRIMARY EXAMINER  
GROUP 3300